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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on March 27, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-96-2018 - 14

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Federal Express Corporation filed 8/31/01 for:

XX Waiver of the 90-day dormancy condition

By Order 96-2-17 the Department granted Federal Express exemption authority to provide scheduled all-cargo service in the New York/Memphis-Moscow market and allocated it five weekly all-cargo frequencies for this service. That award was subject to the condition that the frequency allocation would expire automatically and the frequencies would revert to the Department for reallocation if they were not used for a period of 90 days.

On November 1, 1999, Federal Express temporarily suspended its direct flight operations serving Moscow. By Notices of Action Taken dated January 24 and October 10, 2000, the Department granted Federal Express waivers of the 90-day dormancy condition through November 1, 2001. Under the terms of the waiver that we granted on October 10, 2000, the frequencies would have reverted to the Department on January 30, 2002. On August 31, 2001, Federal Express applied for a further waiver of its five frequencies through November 1, 2002. Before we acted on Federal Express' August 31 application, the Department issued a blanket waiver to all U.S. carriers from the dormancy conditions on their international route authorities, including the frequencies at issue here, until March 31, 2002. The balance of Federal Express' August 31 request, i.e., for a waiver of five frequencies through November 1, 2002, remained pending before us.

XX Motion of Federal Express Corporation filed 3/19/02 for:

Immediate Department action on the balance of Federal Express' August 31, 2001 application not covered by the blanket waiver.

Amendment of application to seek a waiver of the dormancy condition for one U.S.-Russia frequency through June 30, 2002, and waiver of the dormancy condition for the remaining four frequencies through November 1, 2002.

Federal Express states that it intends to begin one weekly round trip flight between Memphis and Moscow, via Paris, and thus, seeks a waiver until June 30, 2002, for one of its frequencies. Federal Express states that it will initiate service as soon as it receives all the necessary government approvals for this flight. With respect to the remaining four flights, Federal Express stated that it would resume its U.S.-Russia direct service as soon as traffic conditions warrant.¹

¹ In its original application and in its March 19, 2002 motion Federal Express stated that it intended to rely on the automatic extension provisions of the Administrative Procedure Act, 5 U.S.C. 558(c) to continue in effect its existing dormancy condition waiver until the Department rules on the balance of its August 31, 2001 application. We find that authorizations such as those at issue here do not constitute a "license of an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c) as implemented by 14 CFR Part 377. Therefore, the automatic extension provisions do not extend to Federal Express' requested dormancy waiver application.

Applicant rep. : Melissa Paul, 901-434-8580 DOT analyst : Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted August 31 application, as amended (See Remarks)

The above action was effective when taken for one frequency: March 27, 2002, through June 30, 2002²

The above action was effective when taken for four frequencies: March 27, 2002, through November 1, 2002³

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Remarks: By Order 2001-11-15, following the events of September 11, 2001, the Department granted all U.S. carriers a blanket waiver from the dormancy conditions related to their international route authorities through March 31, 2002. The Department stated that it would entertain applications to extend the dormancy waiver beyond March 31 for specific city-pair, limited-entry services where carriers can demonstrate that circumstances warrant. While we have granted Federal Express' amended request here, as in the public interest, based on the circumstances stated in the request, there should be no expectation that an additional request will similarly be granted. Any future requests to extend the dormancy waiver for the frequencies at issue here will have to be considered in light of the specific arguments offered in support of the request and any comments that might be filed in response, and in the context of the circumstances present at that time. Furthermore, should another carrier seek to use the frequencies at issue here, we reserve the right to reexamine whether the waivers granted here continue to be in the public interest.

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy, and (2) the authority granted is consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

² Federal Express' waiver from the dormancy condition is effective through June 30, 2002, or until the date on which Federal Express begins service with its frequency, whichever occurs earlier. The 90-day dormancy period will begin on the date Federal Express begins service. If Federal Express does not begin service by June 30, 2002, this frequency allocation expires automatically.

³ Federal Express' waiver from the dormancy condition with respect to these four frequencies is effective through November 1, 2002, or until the date on which Federal Express begins service with each of the frequencies, whichever occurs earlier. The 90-day dormancy period will begin on the date Federal Express begins service. As to any frequency with which Federal Express does not begin service by November 1, 2002, its frequency allocation with respect to that frequency expires automatically.